

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

STUDENTS FOR FAIR ADMISSIONS,)
INC.)
)
Plaintiff,)
)
v.) Civil Action No. 1:14-cv-14176-ADB
)
PRESIDENT AND FELLOWS OF)
HARVARD COLLEGE (HARVARD)
CORPORATION),)
)
Defendant.)

**PARTIALLY CONSENTED-TO MOTION TO PARTICIPATE AS
AMICUS CURIAE ON PUBLIC ACCESS AND INCORPORATED
MEMORANDUM OF LAW**

The New England First Amendment Coalition, the Reporters Committee for Freedom of the Press, the Massachusetts Newspaper Publishers Association, and GateHouse Media, LLC move for leave of court to participate in this matter as amici curiae with respect to public access to judicial documents and proceedings during summary judgment and trial proceedings in this case. The proposed amici are public interest groups, an association of Massachusetts newspapers, and the owner of numerous weekly and daily newspapers in Massachusetts and throughout the United States. The proposed amici take no position on the merits of the underlying dispute; their interest is limited to the public's right to know about judicial documents and proceedings.

The proposed amici recently learned that the Court requested letter briefs on public access to summary judgment filings and will be considering that subject on April 10, 2018. The proposed amici have prepared a letter brief presenting views on that subject (**Exhibit A**, attached) and request that the Court accept same for filing.

The Plaintiff has consented to the proposed amici's request for leave to participate. Harvard does not oppose the submission of the letter-brief, and takes no position on the request for ongoing amicus status.

In support of this motion, the proposed amici rely upon the following incorporated memorandum of law.

INCORPORATED MEMORANDUM OF LAW

Third-parties have a well-established right to intervene in civil proceedings to contest orders sealing judicial documents or closing the courtroom. *See, e.g., Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 783-84 (1st Cir.1988) (“where intervention is available (*i.e.* civil cases), it is an effective mechanism for third-party claims of access to information generated through judicial proceedings”). The proposed amici instead request only friend of the court status, without prejudice, limited to the opportunity to file briefs when the Court considers matters related to public access.

This Court previously recognized that the role of amicus curiae is to “assist the court in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” [ECF No. 52 p. 21 (quotation marks omitted).] Amicus status allows third-parties to participate by presenting “their views and arguments” and to participate by filing substantive briefs and being heard at oral argument. *Id.* at 22. [ECF No. 52 p. 22.] The proposed amici are well positioned to provide input on matters of public access in this litigation given their longstanding interest in an open and transparent justice system.

The New England First Amendment Coalition is a nonpartisan, nonprofit organization that supports the rights of New England journalists to access government records and information, including judicial records and information. *See* <http://nefac.org>. Its mission is to advance and protect the five freedoms of the First Amendment, and the principle of the public's right to know, in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. In collaboration with other advocacy organizations, it also seeks to advance understanding of the First Amendment across the nation and freedom of speech and press issues around the world. It has filed numerous amicus briefs in state and federal courts.¹

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association. *See* <https://www.rcfp.org>. The Reporters Committee was founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today it provides pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

The Massachusetts Newspaper Publishers Association is a voluntary association of daily and weekly newspapers published throughout Massachusetts. *See* <http://www.masspublishers.org>. It represents those newspapers in legal and legislative matters of common concern. In particular, it focuses on preserving freedom of speech and the public's right to know.

GateHouse Media, LLC is an indirect wholly-owned subsidiary of New Media Investment Group Inc., a Delaware corporation and a New York Stock Exchange publicly-traded

¹ See, e.g., *Steinmetz v. Coyle & Caron, Inc.*, 862 F.3d 128 (1st Cir.2017); *Rideout v. Gardner*, 838 F.3d 65 (1st Cir.2016); *Pinkham v. Dept. of Transp.*, 139 A.3d 904 (Me. 2016); *Commonwealth v. Lucas*, 472 Mass. 387 (2015), *Commonwealth v. George W. Prescott Publ'g Co.*, 463 Mass. 258 (2012); *MaineToday Media, Inc. v. State*, 82 A.3d 104 (Me. 2013); and *Union Leader Corp. v. N.H. Retirement Sys.*, 34 A.3d 725 (N.H. 2011).

company. See <http://www.gatehousemedia.com>. GateHouse is a preeminent provider of print and digital local content and advertising in small and midsize markets. Its portfolio of products, which includes over 630 community publications and more than 535 related websites, serves over 220,000 business accounts and reaches approximately 20 million people on a weekly basis. It prints daily and weekly newspapers throughout Massachusetts.

Because the Court requested letter briefs prior to the upcoming April 10 hearing at which public access to summary judgment submissions will be considered, the proposed amici have likewise prepared a letter brief (**Exhibit A**, attached), and request that the brief be accepted as filed. The proposed amici also request that the Court allow them the opportunity to be heard on any subsequent matters related to public access to judicial proceedings in this case.

CONCLUSION

WHEREFORE, the New England First Amendment Coalition, the Reporters Committee for Freedom of the Press, the Massachusetts Newspaper Publishers Association, and GateHouse Media, LLC respectfully request that the court grant them amicus curiae status limited to issues of public access to these proceedings, and, specifically:

- (A) accept the letter brief attached as **Exhibit A** for filing;
- (B) afford amici the opportunity to be heard on any subsequent matters related to public access to these proceedings (e.g., any proposed seal); and
- (C) grant such other and further relief as may be just and proper.

Dated this 6th day of April, 2017.

Respectfully Submitted,
New England First Amendment Coalition
Reporters Committee for Freedom of the Press
Massachusetts Newspaper Publishers
Association, and
GateHouse Media, LLC

By Their Attorneys,
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CERTIFICATE OF SERVICE

I, Sigmund D. Schutz, Attorney for proposed amici curiae, hereby certify that on the above date, I electronically filed the above motion with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) electronically to counsel of record.

/s/ Sigmund D. Schutz

Sigmund D. Schutz, BBO # 568608

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